Supreme Court, U.S.
FILED

No. 98 875 MAY 28 1998

OFFICE OF THE CLERK

In The
Supreme Court of the United States

October Term 1997

BEAUFORD D. EDDLETON,

Petitioner,

v.

BOARD OF SUPERVISORS OF HANOVER COUNTY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE VIRGINIA SUPREME COURT

Petition for Writ of Certiorari

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23 pp

QUESTIONS PRESENTED

I

Did the Trial Court err by dismissing the Petition for a Declaratory Judgment by failing to find that Eddleton had vested grandfather property rights?

II

Did the Trial Court err by not finding Hanover County Code 3-36 to be unconstitutionally vague, overbroad, discriminatory, arbitrary, capricious, and a violation of due process and equal protection rights of Eddleton?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 1

REASON FOR GRANTING THE WRIT 2

CONCLUSION 12

APPENDIX ..... App. i

TABLE OF AUTHORITIES

Cases:

Board of Supervisors v. Rowe,
216 Va. 128, 216 S.E.2d 199 (1975) 8

Pederson v. City of Richmond,
219 Va. 1061, 254 S.E.2d 95 (1979) 10

Pence v. Bryant,
54 W.Va. 263, 46 S.E. 275 (1903) 10

Potomac Greens Association Partnership
v. City Counsel,
761 F. Supp. 416 E.D. Va. (1991) 10

Richard Grayned v. City of Rockford,
408 U.S. 104, 33 L.E.2d 222 Ct 22 (1972) 9,10

Richmond - Ashland v. Commonwealth,
162 Va. 296, 173 S.E. 892 (1934) 10

Stowe v. Amherst County Board of Zoning,
248 Va. 404 at 407 and 408 3,9

Tinsley v. Richmond,
202 Va. 707, 119 S.E.2d 488 10

Town of Narrows v. Clear-View Cable TV, Inc.,
227 Va. 272, 315 S.E. 835 (1984) 10

Wiley v. County of Hanover,
209 Va. 153, 163 S.E.2d 160 (1968) 10

Hanover County Code 3-36 ..... passim

USCA Amendment 14 1,9,11

Virginia Code Section 18-314 4

OPINIONS BELOW

The Orders of the Virginia Supreme Court dated December 16, 1997 and February 27, 1998.

JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. 1257.

STATUTORY PROVISIONS INVOLVED

Amendments to the United States Constitution:

V. "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

XIV. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Beauford D. Eddleton (Eddleton) filed his Petition for a declaratory judgment in July, 1994. The Board of

Supervisors of Hanover County filed its Demurrer and Motion to Dismiss in August, 1994. After granting the County's Motion, Eddleton appealed.

The Virginia Supreme Court (Record Number 942116) reversed in Eddleton's favor (opinion October 20, 1995).

This case came before Hanover Circuit Court on June 13, 1997. The Court granted judgment for County and dismissed Eddleton's Petition by Order June 24, 1997. The Petition for Appeal was denied on December 16, 1997. The Petition to rehear was denied on February 27, 1998.

REASONS FOR GRANTING WRIT

Prior to hearing evidence, the Court received as Exhibits a sketch of the subject property, a Motion with attachment, the Hanover County Code Section 3-36, a letter from Mr. Berry dated June 28, 1994, and the Beach and Barbecue Music Party advertisement. The Court heard argument (Tr. P. 5 L. 24; P. 28 L. 25).

Eddleton purchased the subject property on Route 1 in Hanover County in 1950. Eddleton then went before Hanover Circuit Judge Bazile in 1950 for a permit to hold functions at a club which he was going to build called the Starlight. It was a dance hall permit under the State Code (Tr. P. 6 L. 11-13). The Court reviewed the old State Code (Tr. P. 6 L. 20-21). His purpose was to construct a building and hold functions in and outside his building. He has done that since 1950. A second dance hall permit was obtained before Judge Bazile in 1963 when the name was changed to the Jamaica Club.

Beginning in 1950, following approval of the permit, Eddleton built his building and pool on the property. Regular functions and parties occurred, musical and non-musical entertainment regularly occurred at the property.

In 1974, after the famous Woodstock Festival, County enacted its Music Festival Ordinance. Eddleton was

present when it was enacted and he spoke to Board member Carlton Jones. In 1980, County ordinance was changed to accommodate Kings Dominion, a theme park.

Eddleton received County letter in 1994 requiring him to get a permit under the ordinance. There have been no injuries over the years, and adequate security and toilet facilities existed.

Eddleton argued that he acquired certain vested grandfather rights beginning in 1950. He never abandoned his rights or changed the character of the functions at his property which were parties. He argued that the County adopted zoning regulations after 1950. He had a legitimate non-conforming use of the property with grandfather rights. He argued the Hanover County Ordinance 3-36 was unconstitutionally vague and that the ordinance was not intended to apply to his property. Eddleton questioned why Kings Dominion was exempt from the ordinance and he was not. He pointed out he had non-musical entertainment. He argued the law was overbroad. He pointed out that 3-36 mentions a recreational park. He was recently charged by the County for operating a commercial recreational facility. County wants both sides of the same issue.

County argued that Eddleton could not now claim vested rights because the old dance hall statute had been repealed. County argued that there was a distinction between zoning permits and outdoor music festival permits.

County argued there is reasonableness in administering the ordinance. It cited differences between Kings dominion, the Eddleton property, and a person with a guitar in a yard.

Court questioned whether Eddleton could claim rights since 1950. Under the dance hall permit awarded in 1950, Eddleton noted the Virginia case Stowe v. Amherst County Board of Zoning, 248 Va. 404 at 407 and 408. He noted in considering vested rights, the property owner must identify a significant government act that would permit the landowner to conduct use of his property that would

otherwise not be allowed, and that he's incurred substantial expense in good faith (Tr. P. 24 L. 9-13). He pointed out that the 3-36 requires open spaces. There are no open spaces on his property.

Court said, "We don't know whether Mr. Eddleton is in violation of anything unless he asks for a permit and they determine which permit he's asking for." Eddleton operated under Virginia Code 18-314 and he built his building and had parties under that Section. Eddleton pointed out that the County may simply not like him as he had difficulty with them before on other matters. –

Court inquired about the nature of Eddleton witness testimony. Eddleton listed witnesses and stated they would support all of his allegations and contentions. Mr. Christian, a former Deputy Sheriff for over twenty (20) years, would testify he was familiar with the ordinance, and parties at the property. He would testify as an expert that this ordinance would not apply to the property and he would not write any violation.

On direct, Eddleton's deed was offered as an Exhibit (Tr. P. 30 L. 13). So was his dance hall permit under Virginia Code Section 18-314 (Tr. P. 30 L. 19-22). The Statute was offered as an Exhibit. The Club was named the Starlight Club. The size was 2.165 acres. Eddleton still owns the property. After the permit, Eddleton built a Clubhouse facility and an outside patio. Arthur Murray dances and a band played on the patio regularly.

After reviewing a diagram, Eddleton identified the pool. He said it was built in 1952 or 1953. He said he had music festivals and reunions and "all kinds of parties there, hundreds of them" (Tr. P. 33 L. 13-14). Pool parties also regularly were held on the property. Wiffle ball and kick ball and "all types of activities within the acre." The area inside the fence around his property was "about an acre" (Tr. P. 33 L. 3-4). Functions were from "the early 50's on" and occurred often times more than once a week. A later permit

was sought when the name was changed to the Jamaica Club. That permit was an Exhibit.

All activities continued as before, after the new Jamaica Club permit was issued. He had been to Kings Dominion. He said "It's all open where they have music" (Tr. P. 36 L. 17-18). He said it would be 100's of acres.

Eddleton received the 1994 letter from Mr. Berry which indicated there would be prosecution if functions occurred without a County permit. He had never received such a letter from the County. He had maintained security. He had used the Sheriff's Deputies. He had toilet facilities which had health department approval for both the patio and Club. He had obtained A.B.C. approval for alcoholic beverages. He said he had no trouble on his property. He said "we run a tight ship."

Because of Berry's letter, and as a result of litigation regarding that letter, Eddleton filed his Petition in this case.

He recently received a criminal summons from the County. A copy was introduced. It mentioned a recreational facility. The ordinance uses remarkably similar language and refers to recreation park. The flyer (Exhibit) for the Beach and Barbecue Music Party was the basis of the Berry's letter.

Eddleton wanted the type of party described in that flyer as well as other similar parties (Tr. P. 40 L. 20-23). He had non-musical entertainment and served food on the property. He kept the pool open and games were played in the fenced area. He identified the enclosed patio area and where the band would have played. The entire function was to be in the enclosed area (Tr. P. 43 L. 1-5).

Eddleton was concerned that Kings Dominion could have functions and not apply for a permit. He noted that they hold the same type of functions only on a larger scale.

Eddleton had bingo games during the 70's and 80's. He said on non-bingo nights, he had other outside functions.

Eddleton used the pool continuously after it was built. He maintained the property. He denied any gaps in

the fencing. Day care centers used the pool during certain weekday hours. He rented for weddings and other functions. He had provisions for emergency medical services.

Eddleton attended the Board meeting in 1974 or 1975 when the ordinance was enacted. He was told that the County had complaints of college kids knocking down fences on farms. He was told (the ordinance) "it did not apply to me" (Tr. P. 51 L. 22) by Board member, Carlton Jones (Tr. p. 52 L. 1-4).

Robert Eddleton received the 1994 letter. He said no prior permit had ever been requested on the property. He took pictures of the property. They showed the condition of the property within a month of his testimony. He noted the fence, the pool and the area inside the fence as about an acre. He identified where the band would have played in 1994. He had seen other bands perform at the property in the past. The photographs were introduced.

Robert Eddleton, who is 43, remembered seeing many parties back in the 60's through the early 90's.

He noted that swimming, badminton, volleyball, and horseshoes were regular activities. He noted that badminton and volleyball are permanent facilities.

He had been to Kings Dominion and described it as about 250 acres. Kings Dominion had no music festival permit. He took pictures of Kings Dominion, showing the open area for concerts. He stated "they have a fence that looks similar to the height around our property," and only 200 to 500 maximum at the Jamaica Club. Kings Dominion also had non-musical entertainment. He said that day care functions at the Jamaica Club would not affect parties like the Beach and Barbecue Party (Tr. P. 68 L. 23-25 p. 26 L. 1).

John Thomas Mitchell was 81 years old. He had been to parties at the Club property regularly from 1962 or 1963. He was associated with Aretha Franklin. The pool was used and there was non-musical entertainment.

Oliver Christian had twenty (20) years in law enforcement with Richmond and Hanover Police

Departments. He attended functions at the Eddleton property. He remembered horseshoes, outdoor games and music. He had seen the ordinance and the advertisement for the July, 1994 Beach and Barbecue Festival. He had seen the fence and there were no open spaces in the property. He stated there was non-musical entertainment at the property.

County objected to Christian's testimony to whether the Beach party would have violated the ordinance. Christian said he would not have written a violation of the ordinance if the Beach and Barbecue party had been held. (Tr. P. 77 L. 8-23).

Hester Braxton was security manager since August, 1995 at Kings Dominion. He said the park was about 400 acres with an annual attendance of 2 million. It ran from March to Labor Day. It had rides, food facilities, and small show venues. He said there were restrooms and an amphitheater which seats 3000 to 5000. There was an on-site staff for EMT's, paramedics, cardiac technicians, and a security staff.

He said the concerts were in an open area with a fence around it. They had four or five functions a year. He said that many came for the concerts. He said it would be "hundreds. It could be more," who came just for the concerts and some left immediately after the concerts.

Betty Ackerman, the secretary for the Hanover County Administrator, said that ten (10) permits had been issued for music festivals in the last year. This was objected to as being not relevant. She said that the Hanover Ruritan Bull Roast had not applied for an outdoor festival permit.

Ernest Brian Bolt is a zoning inspector for Hanover County. He drew the sketch of the Jamaica Club property.

Robert Eddleton had attended Hanover Courthouse Ruritan Bull Roast parties. The parties were held on a fifteen to twenty acre tract. He observed dancing and bands. He identified a flyer and pictures (Exhibits) showing the Courthouse Ruritan Club 28th Annual Bull Roast on Tuesday, May 13, 1997, which was typical of what he had

observed there over the years. The pictures showed a large open area. There was musical entertainment and about 500 people present. The Bull Roast had no music festival permit, and was much larger than Eddleton's (Tr. P. 91 L. 12-18).

Court heard from counsel and made several comments before dismissing the suit. The Court said "I can't say whether or not he's in violation of the ordinance because truthfully in talking to the staff over there, and particularly the County attorneys, he wants to operate full time" (Tr. P. 105 L. 12-16).

The Court ruled the ordinance was not faulty in any way (Tr. P. 104 L. 25 P. 105 L. 1). The Court said, "I do question whether it's being applied properly or not in this situation" (Tr. P. 105 L. 1-2).

The Court said, "I certainly can't say that you're in violation of any law because I don't know what the law is" (Tr. P. 105 L. 23-25).

Eddleton argues that his Petition and the evidence in this case state an actual antagonistic assertion and denial of right under the provisions of Virginia Code Section 8.01-184, Board of Supervisors v. Rowe, 216 Va. 128, 132, 216 S.E.2d 199, 204-05 (1975).

The Trial Court said Eddleton had to apply for a permit or something before his rights could be established. And he had to be regulated once established.

Eddleton disagrees. His position is he need not apply for a permit because he has vested rights. Hanover County Code Section 3-36 is vague, overbroad, arbitrary, capricious, and discriminatory. This is true both on its face and enforcement. He argues that from a factual basis, he is not in violation of the Ordinance. The Code also was not intended to apply to his property. It was for a Woodstock type open field party with thousands of party goers.

Eddleton proved vested grandfather rights since 1950. He purchased his property in 1950. He obtained a dance hall permit at which time it was fully discussed that he would be holding inside and outside functions. He built his

building, the pool, and all the outside patio facilities. He was never precluded from doing other lawful activities at his property. He was granted approval to have the functions which would otherwise not have been lawful. The elements of Stowe v. Amherst County Board of Zoning, 248 Va. 404 at 407 are fully satisfied to obtain vested rights.

His activities were not questioned for 44 years until 1994. He has acquired rights in what is in essence a grandfathered vested nonconforming use. The Circuit Court in 1950 exercised the governmental power to have set in motion his good faith construction of his property, pool and facilities. The undisputed testimony established his longstanding practice of having periodic party functions.

The test to determine whether a law is constitutionally vague is set forth in the landmark case of Richard Grayned v. City of Rockford, 408 U.S. 104 33 L.E.2d 222, 295 Ct 2294 (1972). It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined, USCA Amendment 14, Grayned, supra.

Vague law offend several important values: first, vague laws may trap the innocent by not providing fair warning; second, vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis with attendant dangers of arbitrary and discriminatory application, USCA Amendment 14, Grayned, supra. A law must give the person or ordinary intelligence a reasonable opportunity to know what is prohibited so he may act accordingly, USCA Amendment 14, Grayned, supra. If arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them, USCA Amendment 14, Grayned, supra. A clear and precise enactment may nevertheless be overbroad if in its reach it prohibits constitutionally protected conduct, USCA Amendment 14, Grayned, supra. Hanover County Code Section 3-36 violates the above applicable law.

Eddleton was confused. He attended the Board meeting in 1974 to see if the law applied to his property. He was told it did not. Eddleton argued Grayned to the Trial Court. He argued the vagueness test. He pointed out on Page 95 of the Trial transcript, Line 22, the code uses the following confusing terms "gathering", "group of individuals", "primarily music renditions", "conducted in open spaces" and, "not within an enclosed structure". What do those terms mean? No meaningful definition is provided. In addition, there is the confusing language "conducted within the confines of a family theme or recreation park" (Tr. P. 95 L. 19 Tr. P. 96 L. 8).

An ordinance of a regulatory nature must be clear, certain, and definite", Wiley v. County of Hanover, 209 Va. 153, 163 S.E.2d 160 (1968) (Hanover County Zoning Ordinance), Tinsley v. Richmond, 202 Va. 707, 119 S.E.2d 488, Pederson v. City of Richmond, 219 Va. 1061, 254 S.E.2d 95 (1979), Richmond-Ashland v. Commonwealth, 162 Va. 296 173 S.E. 892 (1934), Pence v. Bryant, 54 W. Va. 263, 46 S.E. 275 (1903), Potomac Greens Assoc. Partnership v. City Council, 761 F. Supp. 416 E.D. Va. (1991).

The "judicial branch has the authority to declare the legislative acts void if they are non-uniform in their operation", Town of Narrows, v. Clear-View Cable TV, Inc., 227 Va. 272, 315 S.E. 835 (1984).

Eddleton argues that how can Kings Dominion, with many more people attending functions and concerts in a large open area, be treated differently. The fence is of similar height to Eddleton's fence. Hanover County Code 3-36 does not by name provide an exemption for Kings Dominion with millions of annual visitors where they sometimes have to bring in extra security for concerts. Is the County concerned with the health of people at the functions or just simply giving a sweetheart deal for a fat cat, corporate tax payers?

The Hanover Courthouse Ruritan Bull Roast function does not hold a permit for its functions. This is just another privileged group that the law does not apply to! This non-uniform enforcement practice is wrong, evil, arbitrary, capricious, discriminatory, and it violated Eddleton's due process and equal protection rights.

The Hanover County Code 3-36 is overbroad. The County's position about selected enforcement of open air musical festival parties in someone's backyard raises many troubling questions. Just because Hanover County may elect not to charge someone with a guitar in his backyard, does not excuse the fact that the law is overbroad.

If the law is constitutional, Eddleton argues that it was never intended to apply to him. The alleged evil that Supervisor Carlton Jones told him about, had, by the Supervisor's own words, no application to him.

The Trial Court heard evidence that his property is not in violation of the ordinance. This is for several reasons including the fact that there is a swimming pool and operation there. All the requirements of the code are met, and there never has been an open space or field at his property as contemplated by the 1974 Board.

The Trial Court's many errors may be explained by what the Trial Court said, "truthfully in talking to the staff over there and particularly including the County attorneys" (Tr. P. 105 L. 14-15). Has the Court admitted to discussion which has unfairly prejudiced Eddleton's rights?

All of the rulings of the Court are in error because they violate Eddleton's 5th and 14th Amendment rights (property, due process and equal protection).

CONCLUSION

A writ of Certiorari should be awarded.

BEAUFORD D. EDDLETON

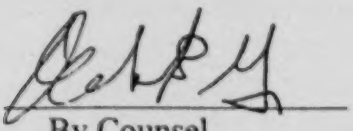

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TABLE OF CONTENTS
Appendix to the Petition

Order of the
Virginia Supreme Court
Denying Petition for Appeal
entered December 16, 1997 ..... App. 1

Order of the
Virginia Supreme Court
Denying Petitition for Rehearing
entered February 27, 1998 ..... App. 2

Hanover County Ordinance, Section 3-36..... App. 3

Petition for a Declaratory Judgment..... App. 4

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on December 16, 1997.

BEAUFORD D. EDDLETON,

Appellant,

against Record No. 971989
Circuit Court No. CH 289-94

BOARD OF SUPERVISORS OF
HANOVER COUNTY,

Appellee.

Upon a Petition for Appeal

On consideration of the petition of the appellant and the argument submitted, in support in opposition to the petition, the Court finds no reversible error and denies the petition.

A copy,

Teste: David Beach
Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 27th day of February, 1998.

BEAUFORD D. EDDLETON,
Appellant,

against Record No. 971989
Circuit Court No. CH 289-94

BOARD OF SUPERVISORS OF
HANOVER COUNTY,
Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 17th day of December, 1997 and grant a rehearing thereof, the prayer of the said petition is denied.

A copy,

Teste: David Beach,
Clerk

ARTICLE III. OUTDOOR MUSICAL OR ENTERTAINMENT FESTIVALS

DIVISION 1. GENERALLY

Sec. 3-36. Definition.

For the purposes of this article, the term "musical or entertainment festival" or "festival" shall mean and include any gathering of groups or individuals for the purpose of listening to or participating in entertainment which consists primarily of musical renditions conducted in open spaces not within an enclosed structure; provided, however, that any such gathering conducted within the confines of a family theme or recreation park, wherein non-musical entertainment is provided on a regular basis, shall not be considered a "musical or entertainment festival" within the meaning hereof.

(Code 1964, & 10A-2; Ord. No. 80-15, & 1, 6-25-80)

VIRGINIA:

In the Circuit Court of Hanover County

BEAUFORD D. EDDLETON,
Plaintiff,

v.

BOARD OF SUPERVISORS OF
HANOVER COUNTY,
Defendant.

SERVE: Sterling Rives, Hanover County
Attorney, Hanover, Virginia 23069

PETITION FOR A DECLARATORY JUDGMENT

NOW COMES Beauford Eddleton, by counsel, and he offers as follows:

1. He is the owner of Hanover County property known as Route 8 Box 1185, Ashland, Virginia 23005 known as the Jamaica Country Club. He has lost revenue based on the Court's initial Order dated July 7, 1994, in a recent case which has also placed in question his property rights.

2. He has serious concerns regarding the County's position in that a music festival permit is needed to conduct events on his property. He disagrees with the position taken by the County, and, he petitions the Court for a declaratory judgment for the Court to determine if he can continue to have the same type of events on his property he has had for many years. He alleges an actual controversy with the county because his rights based on the principals of laches, estoppel, grandfather rights, his rights established by his dance hall permit, and the applicability of the Hanover County Music Festival Ordinance to his property. He

believes he is not in violation of the Ordinance to hold events just like the one which was cancelled by the County under threat of prosecution.

3. The County's Music Festival Ordinance is discriminatory, arbitrary, vague, overbroad, capricious, violates due process and equal protection constitutional rights of the Plaintiff, and, has cost the Plaintiff income and financial losses.

BEAUFORD EDDLETON

/s/_____
By Counsel

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Supreme Court, U.S.
FILED

98 275 MAY 28 1998

OFFICE OF THE CLERK

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1997

BEAUFORD D. EDDLETON,

Petitioner,

v.

BOARD OF SUPERVISORS OF
HANOVER COUNTY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE VIRGINIA SUPREME COURT

Supplemental Appendix To Petition for Writ of Certiorari

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VIRGINIA:

IN THE CIRCUIT COURT OF HANOVER COUNTY

BEAUFORD D. EDDLETON,)
)
Plaintiff,)
)
v.) Case No. 289-94
)
HANOVER COUNTY BOARD)
OF SUPERVISORS,)
)
Defendant.)

FINAL DECREE

This matter came to be heard pursuant to the Petition filed in this case, and after consideration of the evidence of the parties produced at a hearing held on June 13, 1997, the Motion of the Defendant Board of Supervisors filed on June 13, 1997, and arguement of counsel, and it appearing proper to the Court, for all of the reasons stated in the record of this case, the Court having found that the Hanover County Code, Chapter 3, Article III, regulating outdoor music festivals is not invalid and that outdoor musical events held by the Plaintiff are not

exempt from requirements of that Article,

It is ORDERED that this case shall be dismissed with prejudice and stricken from the docket of this Court.

The Clerk shall send certified copies of this Order to counsel of record.

ENTERED: 6/24/97

_____
Judge

I ask for this:

_____
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Senior Assistant County Attorney
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(84) 537-6035

Seen and Objected to:

_____
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(3)

No. 98-275

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SUPREME COURT, U.S.

In The

Supreme Court of the United States

October Term, 1997

BEAUFORD D. EDDLETON,

Petitioner,

vs.

BOARD OF SUPERVISORS OF HANOVER COUNTY,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of Virginia

RESPONDENT'S BRIEF IN OPPOSITION

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TABLE OF CONTENTS

	Page
Statement of the Case	1
Reasons for Denying the Writ	3
I. The Outdoor Music Festival Ordinance Included In The Hanover County Code Is Valid.	3
II. There Is A Reasonable Basis For The Distinction Included In The Ordinance Between A "Family Theme Or Recreation Park" And Eddleton's Property.	3
III. The Issuance Of A "Dance Hall Permit" By The Hanover County Circuit Court Did Not Address Compliance With The County's Requirement For A Permit For An Outdoor Music Festival.	4
IV. Eddleton Proposes To Hold Musical Events In An Open Space, Without A Permit, In Violation Of The Ordinance.	5
Conclusion	6

TABLE OF CITED AUTHORITIES

Cases Cited:

Board of Supervisors v. Carper, 200 Va. 653 (1959) 3

Hanover Society for the Deaf v. Board of Supervisors of Hanover County, Chancery No. 268-94 5

Table of Cited Authorities

	Page
Kisley v. City of Falls Church, 212 Va. 693 (1972)	4
Knowlton v. Browning-Ferris, 220 Va. 571 (1979)	5
Statutes Cited:	
Hanover County Code, Chapter 3, Article III	3
Va. Code § 15.1-510	3
Va. Code § 15.2-1200	3
Va. Code § 18-315	4
Va. Code § 18.2-433	5
APPENDIX	
Appendix — Statutory Provisions Involved	1a

STATEMENT OF THE CASE

Beauford D. Eddleton ("Eddleton") requested a temporary injunction, enjoining the County from enforcing the ordinance pertaining to outdoor music festivals, and the Hanover County Circuit Court held a hearing on the matter on July 7, 1994. That injunction request was based on the same facts prompting initiation of this case. At that hearing the Court considered most of the issues raised in this case, and the Court's consideration is reflected in the transcript which is in the record of this case. Following that hearing, the Court granted the County's motion to dismiss. Later in July, 1994, Eddleton filed a Petition for Declaratory Judgment. After consideration of memoranda and argument of counsel, the Hanover County Circuit Court dismissed that petition, by Order dated September 13, 1994.

Eddleton appealed to the Virginia Supreme Court, which reversed the trial court decision and remanded the case to the Circuit Court, by Order dated October 20, 1995. After consideration of the evidence produced at a hearing held on June 13, 1997, a Motion for Entry of a Decree in Favor of the Defendant filed by the County, and argument of counsel, the Hanover County Circuit Court found that the ordinance in question was valid and that outdoor musical events held by Eddleton were not exempt from County requirements, and entered a Final Decree to that effect on June 24, 1997.

Eddleton filed a Petition for Appeal in the Virginia Supreme Court on September 24, 1997. The Virginia Supreme Court denied Eddleton's Petition for Appeal by Order dated December 17, 1997, and denied Eddleton's Petition to Rehear by Order dated February 27, 1998.

The County denies that Eddleton proved that there had been continuous use of his premises for outdoor musical events. The

County denies that Eddleton proved any other circumstances which would render the use of the property for outdoor musical events a "legal nonconforming use." Any representations by counsel in that regard are not accurate.

Eddleton alleges that because a "dance hall permit" was issued by the Hanover County Circuit Court for the "Jamaica Club" in 1963 pursuant to State statutes which have since been amended to provide for regulation by counties rather than the Court, he is exempt from County regulation applicable to "outdoor music festivals." This particular matter was initiated when an advertisement for a "Beach and BBQ Music Party", to be held at the Eddleton property, appeared in the local newspaper and the County Administrator, John F. Berry, sent a letter to Robert D. Eddleton, Secretary/Treasurer of the Hanover Society for the Deaf, Inc., notifying him that a permit was required pursuant to the County's Outdoor Music Festival Ordinance.

Beauford D. Eddleton bought the subject property in 1950. The testimony at trial was that the site in question had been used at various times for a variety of events, including bingo games. The site is improved by buildings and fencing. The proposed event was to include, as a feature of the advertising, musical entertainment in open spaces not within an enclosed structure. Eddleton has not applied for any permits from the County, nor has he applied to the Circuit Court for any "dance hall permit" since 1963.

Any implications in the Petition for Writ of Certiorari that there has been improper enforcement, or that there have been any improper or arbitrary or capricious actions by the County in relation to the ordinance in question have not been proven and are inaccurate.

REASONS FOR DENYING THE WRIT

I.

THE OUTDOOR MUSIC FESTIVAL ORDINANCE INCLUDED IN THE HANOVER COUNTY CODE IS VALID.

The adoption of an ordinance is a legislative action subject to a presumption of validity, to be reviewed by the courts only to determine whether the action was arbitrary and capricious. *Board of Supervisors v. Carper*, 200 Va. 653 (1959). The provisions of the Hanover County Code, Chapter 3, Article III ("the Outdoor Musical Festival Ordinance") (Appendix), are authorized by Va. Code § 15.1-510 (now recodified as § 15.2-1200), conferring general police powers on counties in Virginia. There is no evidence in the record of any invalid or arbitrary or capricious actions.

Although zoning violations on the property are mentioned in the Petition for a Writ of Certiorari, this is not a case involving the Hanover County Zoning Ordinance. The matter of zoning was not before the State courts. The County Administrator's notification to Eddleton related only to the permit required for an outdoor music festival.

II.

THERE IS A REASONABLE BASIS FOR THE DISTINCTION INCLUDED IN THE ORDINANCE BETWEEN A "FAMILY THEME OR RECREATION PARK" AND EDDLETON'S PROPERTY.

The Outdoor Music Festival Ordinance exempts "a family theme or recreation park wherein nonmusical entertainment is

provided on a regular basis", from the ordinance requirements. Eddleton's contention that his site is similar to Paramount-Kings Dominion is baseless, and was proven to be so. Kings Dominion was issued a special exception (zoning permit) for the operation of an "entertainment park" in 1972, as evidenced by letters of County officials which are part of the record of this case. The record reflects that Kings Dominion maintains an extensive complex of entertainment areas, including water rides, roller coasters, and indoor staged events, in addition to sponsoring several outdoor concerts in the summer. The distinction set out in the ordinance has a rational basis, both in theory and in application to Eddleton's property. *Kisley v. City of Falls Church*, 212 Va. 693 (1972).

The testimony of Hester Braxton, Security Manager at Kings Dominion, in the Hanover County Circuit Court, established the distinction between Kings Dominion and the site owned by Eddleton. There is a considerable difference between a property improved by a building and some fence topped by barbed wire (as is the Eddleton property), and Kings Dominion. The exemption for theme parks, about which Eddleton complains, is founded in the factual differences established by the witnesses at trial.

III.

THE ISSUANCE OF A "DANCE HALL PERMIT" BY THE HANOVER COUNTY CIRCUIT COURT DID NOT ADDRESS COMPLIANCE WITH THE COUNTY'S REQUIREMENT FOR A PERMIT FOR AN OUTDOOR MUSIC FESTIVAL.

Eddleton has no "vested rights" pursuant to a "dance hall permit" issued pursuant to authority of a repealed statute, for an outdoor music festival. Former Va. Code § 18-315 defined

a dance hall as "any place open to the general public where dancing is permitted to which an admission fee is charged or for which any compensation is received. . . ." That definition does not coincide with the Hanover County Code definition of an outdoor music festival, which regulates activities including music but not necessarily dancing. Establishment of a vested right requires, at a minimum, continuous activity over a period of time, with substantial investment, in reliance on government action or authorization. *Knowlton v. Browning-Ferris*, 220 Va. 571 (1979). The Eddleton property has not been used continuously as a music festival site, nor has a permit ever been issued for such a use. The former statutes provided for revocation of permits, and there was no evidence that Eddleton's permit was not revoked. (Counties in Virginia are now authorized to regulate dance halls pursuant to Va. Code § 18.2-433. Circuit courts in Virginia no longer regulate dance halls.)

IV.

EDDLETON PROPOSES TO HOLD MUSICAL EVENTS IN AN OPEN SPACE, WITHOUT A PERMIT, IN VIOLATION OF THE ORDINANCE.

The evidence at trial proved that Eddleton's property is not an enclosed structure but is an open space and thus is subject to the permit requirement. The Outdoor Music Festival Ordinance does not refer to a "partially enclosed structure" as being exempt, or to an outdoor area "enclosed by a fence", as one might describe portions of the subject property, as constituting an "enclosed structure." The finding of Judge Leadbetter in the related case of July, 1994, *Hanover Society for the Deaf v. Board of Supervisors of Hanover County*, Chancery No. 268-94, was made a part of the record in this case. (Appendix, Record No. 94-2116, Supreme Court of Virginia, page 62). That record reflects the finding that the

proposed event is an outdoor event. The portions of the subject property proposed by Eddleton as the site for the outdoor music festival are improved by screened areas, board fences with gaps, and chain link fences. Those improvements do not constitute "enclosed structures."

CONCLUSION

The record in this case reflects a reasonable basis for the distinction between Eddleton's property and Paramount-Kings Dominion theme park, reflects no impropriety in application of the outdoor music festival permit requirements to Eddleton by Hanover County, and for these reasons and others stated above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

A. LISA BARKER
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HANOVER COUNTY
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(804) 537-6035

Attorney for Respondent

APPENDIX

APPENDIX — STATUTORY PROVISIONS INVOLVED

ARTICLE III. OUTDOOR MUSICAL OR ENTERTAINMENT FESTIVALS*

DIVISION 1. GENERALLY

Sec. 3-36. Definition.

For the purposes of this article, the term "musical or entertainment festival" or "festival" shall mean and include any gathering of groups or individuals for the purpose of listening to or participating in entertainment which consists primarily of musical renditions conducted in open spaces not within an enclosed structure; provided, however, that any such gathering conducted within the confines of a family theme or recreation park, wherein nonmusical entertainment is provided on a regular basis, shall not be considered a "musical or entertainment festival" within the meaning hereof.
(Code 1964, § 10A-2; Ord. No. 80-15, § 1, 6-25-80)

Sec. 3-37. Purpose of article.

This article is enacted pursuant to section 15.1-510 of the Code of Virginia for the purpose of providing necessary regulation for the conduct of musical or entertainment festivals, in the interest of the public health, safety and welfare of the citizens and inhabitants of the county.
(Code 1964, § 10A-1)

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* Cross reference—Operation of sound-producing devices in places of public entertainment or assembly, § 16-9.

Sec. 3-38. Violations of article.

Any person who violates any provision of this article shall be guilty of a Class 1 misdemeanor. Each such violation shall constitute a separate offense. The board of supervisors may bring suits or actions in the circuit court of the county to restrain, enjoin or otherwise prevent a violation of this article. This section shall not be deemed exclusive of all rights or remedies available to the board, but only in addition thereto.
(Code 1964, § 10A-8)

Cross reference — Penalty for Class 1 misdemeanor, § 1-11.

Sec. 3-39. Time limits on entertainment.

Music shall not be rendered nor entertainment provided at a festival for more than eight (8) hours in any twenty-four (24) hour period, such twenty-four (24) hour period to be measured from the beginning of the first performance at such festival.
(Code 1964, § 10A-5)

Sec. 3-40. Minors not to be admitted to certain festivals; exception.

No person under the age of eighteen (18) years shall be admitted to any musical or entertainment festival at which alcoholic beverages are sold, dispensed or consumed, unless such person is accompanied by a parent or guardian, the parent or guardian to remain with such person at all times.
(Code 1964, § 10A-6; Ord. No. 80-11, § 1, 4-23-80)

Secs. 3-41–3-50. Reserved.

DIVISION 2. PERMIT

Sec. 3-51. Required.

No person shall stage, promote or conduct any musical or entertainment festival in the unincorporated areas of the county, unless there shall have been first obtained from the board of supervisors a special entertainment permit for such festival.
(Code 1964, § 10A-3; Ord. No. 81-21, 12-23-81)

Sec. 3-52. Application generally.

Application for a permit under this division shall be in writing, on forms provided for the purpose, and filed in duplicate with the county administrator or his designee, at least twenty-one (21) days before the date of the proposed festival. A copy of such application, together with the attached documents, shall be mailed by the county administrator or his designee to each member of the board of supervisors on the day the application is filed.
(Code 1964, § 10A-3; Ord. No. 81-21, 12-23-81)

Sec. 3-53. Plans, statements and other documents to be attached to application.

A permit required by this division shall not be issued, unless the following conditions are met and the following plans, statements, approvals and other documents are attached to the permit application:

Appendix

(1) A copy of the ticket or badge of admission to the festival, containing the date or dates and time or times of such festival, together with a statement by the applicant of the total number of tickets to be offered for sale and the best reasonable estimate by the applicant of the number of persons expected to be in attendance.

(2) A statement of the name and address of the promoters of the festival, the financial backing of the festival and the names of all persons or groups who will perform at the festival.

(3) A statement of the location of the proposed festival, the name and address of the owner or owners of the property on which the festival is to be held and the nature and interest of the applicant therein.

(4) A plan for adequate sanitation facilities and garbage, trash and sewage disposal for persons at the festival. This plan shall meet the requirements of all state and local statutes, ordinances and regulations and shall be approved by the health officer.

(5) A plan for providing food, water and lodging for the persons at the festival. This plan shall meet the requirements of all state and local statutes, ordinances and regulations and shall be approved by the health officer.

(6) A plan for adequate medical facilities for persons at the festival, such plan to be approved by the health officer.

(7) A plan for adequate parking facilities and traffic control in and around the festival area, such plan to be approved by the sheriff.

(8) A plan for adequate fire protection. This plan shall meet the requirements of all state and local statutes, ordinances and regulations and shall be approved by the county fire marshal.

(9) A statement specifying whether any outdoor lights are to be utilized and, if so, a plan showing the location of such lights and shielding devices or other equipment to prevent unreasonable glare beyond the property on which the festival is located. This plan shall be approved by the supplier of electrical power.

(10) A statement that no music shall be played, either by mechanical device or live performance, in such a manner that the sound emanating therefrom shall be unreasonably audible beyond the property on which the festival is located.

(Code 1964, §§ 10A-3, 10A-4; Ord. No. 81-21, 12-23-81)

Sec. 3-54. Applicant to grant right of entry to enforce article.

No permit shall be issued under this division, unless the applicant shall furnish to the board of supervisors written permission for the board, its lawful agents or duly constituted law-enforcement officers to go upon the property at any time for the purpose of determining compliance with the provisions of this article.
(Code 1964, § 10A-7)

Sec. 3-55. Issuance or denial.

The board of supervisors shall act on an application for a permit under this division within ten (10) days from the filing of the same. If granted, the permit shall be issued in writing, on a form provided for the purpose, and mailed by the county administrator or his designee to the applicant at the address indicated. If denied, the refusal shall be in writing and the reasons for such denial stated therein and mailed by the county administrator or his designee to the applicant at the address indicated.
(Code 1964, § 10A-3; Ord. No. 81-21, 12-23-81)

Sec. 3-56. Revocation.

The board of supervisors shall have the right to revoke any permit issued under this division upon noncompliance with any of the provisions and conditions of this article.
(Code 1964, § 10A-7)

Secs. 3-57–3-70. Reserved.

Supreme Court, U.S.
FILED
SEP 29 1998
OFFICE OF THE CLERK

NO. 98-275

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1997

BEAUFORD D. EDDLETON,

Petitioner,

v.

BOARD OF SUPERVISORS OF
HANOVER COUNTY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE VIRGINIA SUPREME COURT

Reply Brief in Opposition

Robert S. Ganey, Esq.
Counsel of Record
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TABLE OF CONTENTS

Page

Statement of the Case 1

APPENDIX

Appendix - Beach & BBQ Music Party flyer 1A

Appendix - Virginia Supreme Court Order dated October 20, 1995 . . . 2A

STATEMENT OF THE CASE

On page 1 of the Respondent's Brief in Opposition, the County argues that "Eddleton requested a temporary injunction, enjoining the County from enforcing the Ordinance pertaining to outdoor music festivals . . . " This statement is false and incorrect. The Hanover Society for the Deaf, Inc., filed that suit. The Hanover Society for the Deaf, Inc. was the sponsor of the Beach & BBQ Music Party scheduled for July 9, 1994 (See Appendix) The Hanover Society for the Deaf, Inc., and its members, wanted the Hanover Circuit Court to enjoin the County from prosecuting them for holding this function without a permit.

A letter threatening prosecution was received a very short time prior to the scheduled party.

The Trial Court, acting with a non resident Judge, ruled that under Virginia Law, he could not enjoin, in advance, authorities from issuing criminal charges. He specifically stated he was not deciding the underlying issues in dispute.

Beauford Eddleton was not a party to that suit. See Appendix, Virginia Supreme Court Opinion dated 20th October, 1995.

He filed his declaratory judgment petition to determine his rights. The issues raised in his Petition were not adjudicated in that case (See Appendix, Virginia Supreme Court Opinion, dated October 20, 1995. The County inferences to the contrary are false and misleading.

CONCLUSION

A Petition for Writ of Certiorari should be granted.

Respectfully Submitted,

ROBERT S. GANEY, ESQ.
Hanover Law Office
P. O. Box 174
Hanover, VA 23069
(804) 537-5389

Attorney for Petitioner

APPENDIX

BEACH & BBQ

MUSIC PARTY

HERE:

JAMAICA COUNTRY CLUB
4 MILES SOUTH OF ASHLAND
ON US. #1 HIGHWAY

WHEN:

SATURDAY JULY 9, 1994
FROM 4 PM. TO 10PM.

ADVANCE ADMISSION IS $ 15.00 PER PERSON WHICH INCLUDES

MUSIC BY KING EDWARD AND THE BD'S
ALL THE BBQ AND FIXINGS THAT YOU CAN EAT
SWIMMING IN OUR LARGE OLYMPIC SIZE POOL
DANCING IN OUR COVERED PATIO AND HUGE DANCE FLOOR
***FREE BEER AND SOFT DRINKS ***

ADVANCE TICKETS ON SALE AT THE FOLLOWING LOCATIONS:

THE JAMICA CLUB AND THE FOLLOWING AREA FAS-MART STORES: MECHANICSVILLE NEAR LEE DAVIS HIGH SCHOOL, VARINA, ASHLAND, DOSWELL, MONTPELIER, AND STAPLES MILL ROAD ACROSS FROM THE MCDONALD'S RESTAURANT.

Sponsored by the Hanover Society for the Deaf, Inc. a non-profit charity

NO FRISBEES, COOLERS, WATER-GUNS, OR GLASS WILL BE ALLOWED INSIDE OF THE GATE

FOR MORE INFORMATION CALL 798-6996

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 20th day of October, 1995.

Beauford D. Eddleton, Appellant,

against Record No. 942116
Circuit Court No. 289-94

Board of Supervisors of Hanover County, Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of Hanover County on the 13th day of September, 1994

Upon consideration of the record, the briefs, and the argument of counsel, the Court is of opinion the judgment of the trial court should be reversed for the following reasons: (1) the petition for declaratory judgment is not barred by the doctrine of res judicata because (a) plaintiff was not a party to the former adjudication and (b) the issues raised in the petition were not adjudicated therin; and (2) the petition is sufficient to state an actual

antagonistic assertion and denial of right under the provisions of Code Section 8.01-184. Board of Supervisors v. Rowe, 216 Va. 128, 132, 216 S.E. 2d 199, 204-05 (1975).

Accordingly, the judgment in favor of the appellee is reversed and the case is remanded to the circuit court for further proceedings.

This order shall be certified to the said circuit court.

A Copy,

Teste:

David B. Beach,
Clerk